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**Hearing Date: December 19, 2023, at 10:00 a.m.**  
**Objection Deadline: December 12, 2023, at 5:00 p.m.**

*Attorneys for 4452 Broadway 1 LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

4452 Broadway Mazal LLC,

Debtor.

-----X

Chapter 11

Case No. 23-11832-lgb

Hon. Lisa G. Beckerman  
United States Bankruptcy Judge

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that 4452 Broadway 1 LLC (the “Secured Creditor”), secured creditor of the above captioned debtor and debtor in possession, 4452 Broadway Mazal LLC (the “Debtor”), the Secured Creditor will move (the “Motion”) at a remote hearing by using the Zoom for Government® videoconferencing platform hearing before the Honorable Lisa G. Beckerman, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004-1408, Courtroom 623, on December 19, 2023 at 10:00 a.m., or as soon thereafter as counsel can be heard for the entry of an Order: (i) pursuant to 11 U.S.C. §§101(51B) and 105 declaring the Debtor to be a single asset real estate business debtor and (ii) granting such further and different relief as the Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE**, that a hearing shall be conducted via Zoomgov

pursuant to the court's rules posted at <https://www.nysb.uscourts.gov/content/judge-lisa-g-beckerman>. Parties who wish to (i) participate "live" or (ii) listen only to a hearing telephonically may do so without requesting permission from Chambers. Parties must register for the Zoomgov hearing using the eCourtAppearances tool located on the Court's website <https://www.nysb.uscourts.gov/ecourts-appearances>. Outlook invitations will be sent after 4:00pm the business day before the hearing.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the Motion must be made in writing and received: (i) in the Bankruptcy Clerk's office at the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004-1408, (ii) by the undersigned, Kriss & Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10017; and (iii) by the Office of the United States Trustee, One Bowling Green, Suite 534, New York, 10004-1408 no later than **seven (7) days** prior to the hearing date set forth herein.

Dated: New York, New York  
November 30, 2023

KRISS & FEUERSTEIN LLP

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Fresh Meadows, NY 11365

Big Apple Testing, Inc.  
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Ozone Park, NY 11416

Carlyle I Douglas Land  
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Metrotech Center  
Brooklyn, NY11201

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First Insurance Funding  
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Islandia, NY 11749

First Service Residential  
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Hakeem Maintenance Serv.  
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HAP Investments  
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HAP Venture Fund 3 LP  
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Trust  
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KISAY Construction Services Inc.  
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Saint Albans, NY 11412

Langan Engineering, Environ.  
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*Attorneys for 4452 Broadway 1 LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

4452 Broadway Mazal LLC,

Case No. 23-11832-lgb

Debtor.

Hon. Lisa G. Beckerman

United States Bankruptcy Judge

-----X

**4452 BROADWAY 1 LLC’S APPLICATION IN SUPPORT OF THE ENTRY OF  
AN ORDER DESIGNATING THE DEBTOR AS SINGLE ASSET REAL ESTATE**

TO THE HONORABLE LISA G. BECKERMAN,  
UNITED STATES BANKRUPTCY JUDGE:

4452 Broadway 1 LLC (the “Secured Creditor”) a secured creditor and mortgagee of the Debtor, 4452 Broadway Mazal LLC (the “Debtor”), by and through its attorneys, Kriss & Feuerstein LLP, respectfully submits this application (the “Application”) in support of its Motion (the “Motion”) for the entry of an Order: (i) pursuant to 11 U.S.C. §§101(51B) and 105 declaring the Debtor to be a single asset real estate business debtor and (ii) granting such further and different relief as the Court may deem just and proper. In support of its Application, the Secured Creditor respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Debtor must be designated as Single Asset Real Estate (“SARE”) pursuant to 11 U.S.C. § 101(51B).

2. First, the Debtor possesses a single property used in connection with a single project located at 4452 Broadway, New York 10040 (Block: 2170; Lots: 62 & 400) (the “Property”).

3. Second, the Property generates all or substantially all of the gross income of the Debtor as its only potential income is from the operation of the property.

4. Third, the Debtor does not conduct any other business at the Property other than the operation of the Property and activities incidental thereto, as Debtor’s only activity involves managing a stalled construction project.

5. Fourth, the Debtor is not a family farmer.

6. Finally, the Debtor specifically acknowledged its SARE designation based upon the plain language of the underlying Loan Documents (defined below).

7. Accordingly, and for the reasons set forth below, Secured Creditor respectfully requests that this Court enter an Order: (i) pursuant to 11 U.S.C. §§101(51B) and 105 declaring the Debtor to be a single asset real estate business debtor; and (ii) granting such further and different relief as the Court may deem just and proper.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 & 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 101(51B) and 105(a) of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule

9014 of the Federal Rules of Bankruptcy Procedure (the “Rules”).

## **BACKGROUND**

### **The Loan**

10. On or about April 29, 2013, the Debtor acquired the Property from KIMSL 4452 Broadway, LLC, pursuant to a Bargain and Sale Deed (the “Deed”) recorded in the City Register of the City of New York, County of New York (the “Register’s Office”) on May 7, 2013 under City Register File Number (CRFN): 2013000183309. A copy of the Deed is annexed hereto as **Exhibit “A”**.

11. On January 23, 2019, the Debtor executed, acknowledged and delivered to Secured Creditor an Amended and Restated Note (the “Land Loan Note”), bearing said date, wherein and whereby it was covenanted and agreed that it would repay Secured Creditor, in the principal amount of \$10,000,000.00, with interest thereon as set forth in the Note in connection with a commercial loan (the “Land Loan”). A copy of the Land Loan Note is annexed hereto as **Exhibit “B”**.

12. On January 23, 2019, to secure repayment of the indebtedness evidenced by the Land Loan Note, the Debtor executed, acknowledged, and delivered to Secured Creditor an Amended and Restated Mortgage and Security Agreement (the “Land Loan Mortgage”), encumbering the Property, which was recorded on January 30, 2019 in the Register’s Office under CRFN: 2019000034948. A copy of the Land Loan Mortgage is annexed hereto as **Exhibit “C”**.

13. On January 23, 2019, as further security for the Land Loan Note, Amir Hasid and Nir Amsel (collectively, the “Guarantors” and together with the Debtor, collectively, the “Borrower Parties”), individually, executed, acknowledged, and delivered to Secured Creditor a Conditional Guaranty (the “Conditional Guaranty”), guaranteeing all obligations under the Land



Loan to Secured Creditor in the principal amount of \$10,000,000.00 and a Debt Service and Carry Guaranty (the “Debt Service and Carry Guaranty” and together with the Conditional Guaranty, the “Land Loan Guarantees” and together with the Land Loan Note, the Land Loan Mortgage, and all other documents executed in connection with the Land Loan, collectively, the “Land Loan Documents”), guaranteeing all obligations under the Land Loan to Secured Creditor in the principal amount of \$10,000,000.00. Copies of the Land Loan Guarantees are annexed hereto **Exhibit “D”**.

14. On January 23, 2019, the Debtor executed, acknowledged and delivered to Secured Creditor a Building Loan Note (the “Building Loan Note”), bearing said date, wherein and whereby it was covenanted and agreed that it would repay Secured Creditor, in the principal amount of \$35,000,000.00 with interest thereon as set forth in the Note in connection with a commercial loan (the “Building Loan”). A copy of the Building Loan Note is annexed hereto as **Exhibit “E”**.

15. On January 23, 2019, to secure repayment of the indebtedness evidenced by the Building Loan Note, the Debtor executed, acknowledged, and delivered to Secured Creditor a Building Mortgage and Security Agreement (the “Building Loan Mortgage”), encumbering the Property, which was recorded on January 30, 2019 in the Register’s Office under CRFN: 2019000034951. A copy of the Building Loan Mortgage is annexed hereto as **Exhibit “F”**.

16. On January 23, 2019, as further security for the Loan, the Debtor executed, acknowledged, and delivered to Secured Creditor a Building Loan Agreement (the “Building Loan Agreement”). A copy of the Building Loan Agreement is annexed hereto as **Exhibit “G”**.

17. On January 23, 2019, as further security for the Building Loan Note, the Guarantors individually, executed, acknowledged, and delivered to Secured Creditor a Conditional Guaranty (the “Conditional Guaranty”), guaranteeing all obligations under the Building Loan to Secured

Creditor in the principal amount of \$35,000,000.00 and a Debt Service and Carry Guaranty (the “Debt Service and Carry Guaranty” and together with the Conditional Guaranty, the “Building Loan Guarantees” and together with the Building Loan Note, the Building Loan Mortgage, the Building Loan Agreement and all other documents executed in connection with the Building Loan, collectively, the “Building Loan Documents”), guaranteeing all obligations under the Land Loan to Secured Creditor in the principal amount of \$10,000,000.00. Copies of the Building Loan Guarantees are annexed hereto **Exhibit “H”**.

18. On January 23, 2019, the Debtor executed, acknowledged and delivered to Secured Creditor a Project Loan Note (the “Project Loan Note”), bearing said date, wherein and whereby it was covenanted and agreed that it would repay Secured Creditor, in the principal amount of \$3,000,000.00, with interest thereon as set forth in the Note in connection with a commercial loan (the “Project Loan” and together with the Land Loan, the Building Loan, collectively, the “Loans”). A copy of the Project Loan Note is annexed hereto as **Exhibit “I”**.

19. On January 23, 2019, to secure repayment of the indebtedness evidenced by the Project Loan Note, the Debtor executed, acknowledged, and delivered to Secured Creditor a Project Mortgage and Security Agreement (the “Project Loan Mortgage”), encumbering the Property, which was recorded on January 30, 2019 in the Register’s Office under CRFN: 2019000034954. A copy of the Project Loan Mortgage is annexed hereto as **Exhibit “J”**.

20. On January 23, 2019, as further security for the Project Loan Note, the Guarantors, executed, acknowledged, and delivered to Secured Creditor a Conditional Guaranty (the “Conditional Guaranty”), guaranteeing all obligations under the Project Loan to Secured Creditor in the principal amount of \$3,000,000.00 and a Debt Service and Carry Guaranty (the “Debt Service and Carry Guaranty” and together with the Conditional Guaranty, the “Project Loan

Guarantees” and together with the Project Loan Note, the Project Loan Mortgage, and all other documents executed in connection with the Project Loan, collectively, the “Project Loan Documents”), guaranteeing all obligations under the Project Loan to Secured Creditor in the principal amount of \$3,000,000.00. Copies of the Project Loan Guarantees are annexed hereto **Exhibit “K”**.

21. On or about May 13, 2020, the Borrower Parties and Secured Creditor entered into a Loan Modification Agreement (the “First Loan Modification Agreement”). A copy of the Loan Modification Agreement is annexed hereto as **Exhibit “L”**.

22. On or about August 25, 2020, the Borrower Parties and Secured Creditor entered into a Second Loan Modification Agreement (the “Second Loan Modification Agreement”). A copy of the Second Loan Modification Agreement is annexed hereto as **Exhibit “M”**.

23. On or about July 11, 2022, the Borrower Parties and Secured Creditor entered into a Forbearance Agreement (the “Forbearance Agreement”, and together with the Land Loan Documents, the Building Loan Documents, the Project Loan Documents, the First Loan Modification Agreement, Second Loan Modification Agreement, and all other documents executed in connection with the Loans, collectively, the “Loan Documents”). A copy of the Forbearance Agreement is annexed hereto as **Exhibit “N”**.

24. Pursuant to the Forbearance Agreement, a deed to the Property would be held in escrow by the Secured Creditor provided there was no default under the Forbearance Agreement (See Ex N., at ¶ 6).

### **The Default**

25. The Debtor failed to comply with the terms and provisions of the Loan Documents by, among other things: (i) the failure to discharge and/or bond the following mechanic's liens: (a)

lien in the amount of \$52,643.00, filed by Hakeem Maintenance Services, (b) lien in the amount of \$1,292,613.51, filed by Broadway Construction Group Inc., (c) lien in the amount of \$31,595.00, filed by AMR Electrical Contracting Corp., and (d) lien in the amount of \$32,982.44, filed by Able Equipment Rental Inc. against the Property (the “Mechanic's Lien Default”) and (ii) the failure to pay the full indebtedness when it became due on the Extended Maturity Date of January 22, 2022 (the “Maturity Default”)

26. In addition, the Debtor defaulted under the terms of the Forbearance Agreement by failing to repay the Loan on or before the Termination Date (as defined in the Forbearance Agreement) (the “Forbearance Default”, and together with the Maturity Default and the Mechanic's Lien Default, collectively, the “Defaults”).

27. On November 16, 2023, 500 Summit Avenue Mazal, LLC (an affiliate of the Debtor) filed its own Chapter 11 case (See Case No. 23-11831-lgb).

### **The Bankruptcy Case**

28. On November 16, 2023, the Debtor filed a Petition (the “Petition”) for relief under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the Southern District of New York (Case No. 23-11832) (the “Bankruptcy Case”).

29. The Debtor claims the Bankruptcy Case was filed “out of an abundance of caution to avoid recordation of the Deed” under the Forbearance Agreement [ECF No. 7, at ¶ 5].

30. Where the Debtor is to describe its business on the Petition, instead of checking the SARE box, the Debtor checked “none of the above” [ECF No. 1].

31. A meeting of creditors pursuant to 11 U.S.C. § 341 is scheduled for December 21, 2023 [ECF No. 5].

32. An initial case conference is scheduled for December 19, 2023 [ECF No. 7].

33. To date, the Debtor has not filed any Schedules and/or Statement of Financial Affairs.

### **ARGUMENT**

#### **The Debtor is “Single Asset Real Estate” Pursuant to 11 U.S.C. § 101(51B)**

34. The Debtor should be designated to be single asset real estate (a “SARE”).<sup>1</sup> If a debtor’s estate constitutes SARE, the Bankruptcy Code contains certain restrictions designed to limit the length of the case and the economic imposition that may be placed on creditors whose claims are secured by the debtor’s real property. This section was added to the Bankruptcy Code to prevent abuse of the automatic stay, while also giving the debtor an opportunity to create a workable plan of reorganization. Congress was apparently concerned about the delay in the bankruptcy process and the resulting unfairness to secured lenders when single asset real estate projects were involved in enacting § 362(d)(3). *In re LDN Corp.*, 191 B.R. 320, 326 (Bankr. E.D. Va. 1996). As stated in the Senate Report, “[t]his amendment will ensure that the automatic stay provision is not abused, while giving the debtor the opportunity to create a workable plan of reorganization”. S.Rep. No. 168, 103rd Cong., 1st Sess. (1993). *Id.* The Court in *LDN Corp.*, went on to find that:

In enacting the amendments relative to single asset real estate cases, Congress has provided for *extraordinary expedition*. *In re Kkemko, Inc.*, 181 B.R. 47, 51 (Bankr. S.D. Ohio 1995) ... Representative Brooks, Chairman of the House Judiciary Committee, stated that “[w]ithout bankruptcy reform, companies, creditors, and debtors alike will continue to be placed on endless hold until their rights and obligations are adjudicated under the present system—and that slows down new ventures, new extensions of credit, and new investments”. 140 Cong.Rec. 10,764 (1994). Congressman Brooks went on to say that “[w]e have been very careful in striking a balance between creditors and debtors in the legislation”. *Id.* Although

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<sup>1</sup> 11 U.S.C. § 101(51B) defines “single asset real estate” to mean:

[R]eal property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.

the comments of Congressman Brooks were about the bill as a whole, there is no doubt that section 362(d)(3) in particular addresses the concern that debtors with little of hope of successfully reorganizing delay the bankruptcy process while secured creditors are left helplessly on the sidelines. Congress expressly attempted to avoid the usual delays experienced in Chapter 11 in single asset real estate cases, which historically have been filed to avoid a foreclosure and in the hope that the debtor can come up with some form of a miracle in order to formulate an acceptable plan. Congress was persuaded that such delays in single asset real estate cases are unwarranted and it passed the amendment to Section 362 in 1994 to provide a means to expedite the potential for relief, unless certain conditions are met. The unequivocal language of the statute mandates relief from stay in such cases.

*See In re LDN Corp.*, 191 B.R. 320, 326 (Bankr. E.D. Va. 1996).

#### **A. The Debtor Meets All the Requirements To Be Designated As SARE**

35. To fall within the SARE definition in most cases, a chapter 11 debtor must satisfy three conditions. First, a debtor must possess a single property or project. Even multiple properties may constitute a “single project” when a group of properties have a related connection or purpose in a common plan or scheme involving their use. *In re The McGreals*, 201 B.R. 736, 742 (Bankr. E.D. Pa. 1996); see also *In re Philmont Dev. Co.*, 181 B.R. 220, 224 (Bankr. E.D. Pa. 1995) (interpreting the term “single project” as broad enough to encompass a string of semi-detached houses).

36. Here, it is undisputed the Debtor’s sole asset is the Property, clearly part of a single project, as shown by the Loan Documents, to develop and/or obtain income from the Property. Thus, the Property must be considered a single property or project of the Debtor.

37. Second, the property must generate all or substantially all of the gross income of a debtor. The standard for making this determination is whether the debtor’s activities are able to generate revenue separate and apart from the sale or lease of the underlying real estate. *Kara Homes, Inc. v. Nat’l City Bank (In re Kara Homes, Inc.)*, 363 B.R. 399, 406 (Bankr. D.N.J. 2007) (holding that debtors that were conducting such activities as acquiring land, constructing, and

selling homes were SARE debtors).

38. Here, the Debtor does not have any income (or potential income) other than that generated from the Property because Debtor's operations consist of nothing more than a stalled construction project.

39. Third, in order to meet the definition of a SARE, the debtor must not conduct business at the property, other than the operation of the real property and activities incidental thereto, and the debtor must not be considered a family farmer. For instance, purchasing and developing land, planning and constructing homes, and marketing and selling homes are activities incidental to operation of the real estate. *Id.*

40. Here, the Debtor does not conduct any other activities besides operating the Property. There is no suggestion that Debtor conducts business at the Property other than the operation of the Property and activities incidental thereto. Again, the Debtor's activities involve nothing other than a stalled construction project.

41. As a result, Secured Creditor is entitled to an order designating Debtor as SARE pursuant to 11 U.S.C. § 101(51B).

**B. Debtor Must be Designated as SARE Pursuant to the Plain Language of the Loan Documents.**

42. A party who signs a document is bound by its terms. *See Shakir v. Sallie Mae (In re Shakir)*, 2013 Bankr. Lexis 1293 (E.D.N.Y. Bankr. 2013); *See Also, Marciana v. DCH Auto Group*, 14 Supp. 3d 322 at 331 (S.D.N.Y. 2014) *citing, Brandywine Pavers, LLC v. Bombard*, 108 A.D.3d 1209 (4<sup>th</sup> Dep't 2013). Here, the Debtor specifically warranted in the Land Loan Mortgage, the Building Loan Mortgage, and the Project Loan Mortgage that it is SARE:

"Mortgagor hereby represents and warrants that the Mortgage Property constitutes "single asset real estate" as defined in, and pursuant to, Section 101(51B) of the United Bankruptcy Code."

(See **Ex. C**, at ¶ 62, **Ex. F**, at ¶ 62, **Ex. J**, at ¶62).

43. Further, pursuant to the Forbearance Agreement, the Debtor ratified all terms and conditions of the Loan Documents (See **Ex. N** at ¶ 8(a)).

44. Based on the foregoing, Debtor is SARE and should be designated accordingly.

### **APPLICATION**

45. The Secured Creditor respectfully requests that this honorable Court enter an Order: (i) pursuant to 11 U.S.C. §§101(51B) and 105 declaring the Debtor to be a single asset real estate business debtor and (ii) granting such further and different relief as the Court may deem just and proper.

### **WAIVER OF MEMORANDUM OF LAW**

46. As the Motion does not raise any novel issues of law and the legal authority for the requested relief is set forth herein, Secured Creditor respectfully requests that the Court waive any Memorandum of Law requirement contained in the Local Rules of this court.

### **RESERVATION OF RIGHTS, NOTICE, PROPOSED ORDER, AND PRIOR NOTICE**

47. The Secured Creditor expressly reserves its right to amend or supplement this Motion, to introduce evidence supporting this Motion at the hearing on the Motion, and to file additional and supplemental responses as Secured Creditor deems advisable.

48. Notice of this Motion has been provided to the Office of the United States Trustee, Debtor, the Debtor's counsel and to all creditors of the Debtor entitled to notice in this Chapter 11 case. In light of the nature of the relief requested, Secured Creditor submits that no other or further notices need be provided.

49. A proposed order is annexed hereto as **Exhibit "O"**.

50. No previous application for the relief sought herein has been filed before this Court



in this case.

**[SPACE INTENTIONALLY LEFT BLANK]**

**WHEREFORE**, the Secured Creditor respectfully requests the entry of an Order: (i) pursuant to 11 U.S.C. §§101(51B) and 105 declaring the Debtor to be a single asset real estate business debtor and (ii) granting such further and different relief as the Court may deem just and proper.

Dated: New York, New York  
November 30, 2023

KRISS & FEUERSTEIN LLP  
*Attorneys for 4452 Broadway 1 LLC*

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